

solubility properties of the presently claimed granulated sweeteners. Accordingly, this reference cannot affect the patentability of the present claims.

The rejection of Claims 1-3 under 35 U.S.C. § 102(b) or, in the alternative, under 35 U.S.C. § 103(a) over Muhammad et al is respectfully traversed. Muhammad et al disclose certain sweetener compositions which contain Aspartame and Acesulfame-K. However, as conceded on page 3 of the Official Action, Muhammad et al is silent in regard to the particle size of the disclosed product. Moreover, contrary to the position taken in the Official Action, the granulated sweeteners having the particle size recited in the present claims are not obvious. As explained in detail in the present specification, when the particle size of the granulated sweetener is 1,400  $\mu\text{m}$  or less the sweetener exhibits an unexpectedly improved dissolution rate (see, e.g., page 5, lines 4-10, of the specification). There is no teaching in Muhammad et al which would suggest these results.

In addition, and perhaps even more importantly, the present claims are directed toward granulated sweeteners, while Muhammad et al is completely unconcerned with granulated sweeteners.

Thus, Muhammad et al cannot anticipate the present claims for at least two reasons. First, this reference does not disclose sweeteners having a maximum particle size of about 1,400  $\mu\text{m}$  or less. Second, Muhammad et al does not disclose granulated sweeteners.

Further, the present claims are unobvious, because the claimed sweeteners exhibit an improved dissolution rate which could not have been expected. In support of this assertion, Applicants cite the data presented in Tables 1 and 2 given on pages 11 and 12 of the specification.

The unexpected nature of the improved solubility properties of the presently claimed sweeteners is established by the clear teachings of Muhammad et al. Specifically, Muhammad et al is concerned with preparing compositions which exhibit a delayed release, which is essentially the opposite result afforded by the presently claimed compositions. Thus, there is nothing in Muhammad et al which could even remotely suggest the improved solubility properties of the presently claimed sweeteners.

Moreover, the fact that Muhammad et al is concerned with producing compositions which exhibit a delayed release of Aspartame and Acesulfame-K would lead the skilled artisan who was trying to improve the dissolution rate of Aspartame and Acesulfame-K completely away from the present invention. In fact, any skilled artisan who was trying to improve the dissolution rate of Aspartame and Acesulfame-K would not even consult the teachings of Muhammad et al.

For all of these reasons, the rejection is improper and should be withdrawn.

The provisional rejection of Claims 1-3 under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-6 of copending application serial number 09/581,181 ("the '181 application") is respectfully traversed. The claims of the '181 application are directed certain sweetener compositions. However, there is nothing in the claims of the '181 application which would suggest the present ***granulated*** sweeteners. Thus, the claims of the '181 patent cannot even create a *prima facie* case of obviousness against the present claims.

Moreover, there is nothing in the claims of the '181 application which would even remotely suggest the improvements afforded by the presently claimed ***granulated***

weeteners. In contrast, as explained above, the presently claimed granulated sweeteners exhibit an unexpected improvement in dissolution rate.

For these reasons, the rejection is improper and should be withdrawn.

Finally, Applicants wish to bring to the Examiner's attention the fact that two Information Disclosure Statements were filed on April 24, 2001, and Applicants respectfully request acknowledgment of those Information Disclosure Statements and an indication that the references cited therein were considered in the next communication from the PTO. The Examiner is also requested to acknowledge consideration of the documents cited in the International Search Report according to MPEP §609 by express statement in the next communication from the PTO.

Applicants submit that the application is now in condition for allowance, and early notification of such action is earnestly solicited.

Respectfully submitted,

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A handwritten signature of Norman F. Oblon is written in black ink.

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Serial No: 09/581,180  
Amendment Filed on:  
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IN THE CLAIMS

Please add the following new claims:

--4. (New) to 19. (New)--.